

Application Serial No. 09/742,622

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## II. Claim Rejections 35 U.S.C. § 102

### A. *The Rejection In View Of Yu et al.*

The Examiner has rejected claims 1-6, 9-11, 13-17, and 21-23 as allegedly anticipated by U.S. Patent No. 4,197,316 ("Yu et al."). Applicants respectfully traverse this rejection.

Yu et al. relates to compositions and methods for treating dry skin. The compositions comprise an acid, amide or ammonium salt of  $\alpha$ - or  $\beta$ - hydroxyacids or  $\alpha$ -ketoacids and esters thereof.

In contrast to the compositions and methods of the '316 patent, the present invention relates to methods (1) to improve skin firmness (claim 1); (2) to improve the appearance of facial contours (claim 13); and (3) for reducing the appearance of sagging skin (claim 23).

Yu et al. fails to teach or suggest that the Yu et al. compositions could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. The methods taught by Yu et al. are clearly limited to the treatment of dry skin. Accordingly, since Yu et al. fails to teach all the elements of the claimed invention, Yu et al. cannot anticipate the present claims.

### B. *The Rejection In View of Van Scott et al.*

The Examiner has rejected claims 1-6, 9-11, 13-17, and 20-23 as allegedly anticipated by U.S. Patent No. 4,234,599 ("Van Scott et al."). Applicants respectfully traverse this rejection.

Van Scott et al. discloses compositions and methods for treating skin keratoses. The compositions comprise an acid, amide or ammonium salt of  $\alpha$ - or  $\beta$ - hydroxyacids or  $\alpha$ -ketoacids and esters thereof. Van Scott et al. does not teach or suggest that the Van Scott et al. compositions could be used in the methods of Applicants' claimed invention. Accordingly, Van Scott et al. cannot anticipate Applicants' claimed invention.

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### III. Claim Rejections 35 U.S.C. § 103

#### A. *The Rejection Over Yu et al. In View of Znaiden et al.*

The Examiner has rejected claims 7, 8 and 18-20 as allegedly unpatentable over U.S. Patent No. 5,523,090 ("Znaiden et al.").

The Examiner recognizes that Yu et al. fails to teach the mixture of acids recited by claims 7, 8, and 18-20 and relies upon Znaiden et al. to cure the deficiencies of Yu et al. Applicants respectfully traverse this rejection.

As discussed above, Yu et al. fails to teach or suggest that the Yu et al. compositions could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. Nothing in the teachings of Znaiden et al. cure these deficiencies of Yu et al.

Znaiden et al. relates to compositions and methods for treating cellulite. The compositions contain an alpha hydroxy acid and/or an inositol phosphoric acid in combination with a xanthine. The active ingredient taught by Znaiden et al. is clearly the xanthine and the inositol phosphoric acid. Indeed, Znaiden et al. specifically teach that the alpha hydroxy acid is added to improve skin penetration of the xanthine. See, for example, col. 5, lines 30-48. Further, there is nothing in the teachings of Znaiden et al. that would teach or suggest that the specific compounds recited in the present claims could be used in methods to improve skin firmness, improve the appearance of facial contours, or reduce the appearance of sagging skin. Accordingly, Znaiden et al. fails to remedy the deficiencies of Yu et al. and the rejection should be withdrawn.

#### B. *The Rejection Over Van Scott et al. in view of Yu et al. and Znaiden et al.*

The Examiner has rejected claims 7, 8, 18 and 19 as allegedly unpatentable over Van Scott et al. in view of Yu et al. and Znaiden et al. The Examiner recognizes that Van Scott et

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al. fails to teach the mixture of acids recited by claims 7, 8, and 18-20 and relies upon Yu et al. and Znaiden et al. to cure the deficiencies of Van Scott et al. Applicants respectfully traverse this rejection.

As discussed above, each of Van Scott et al., Yu et al., and Znaiden et al. fail to teach or suggest that the compounds recited in the present claims could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. Accordingly, Yu et al. and Znaiden et al. fail to cure the deficiencies of Van Scott et al. and the rejection should be withdrawn.

*C. The Rejection Over Yu et al. and Znaiden et al. or alternatively over Van Scott, Yu et al. and Znaiden and Further In View of Quan et al.*

The Examiner has rejected claim 12 as allegedly unpatentable over Van Scott, Yu et al. and Znaiden and further in view of U.S. Patent No. 6,180,133 ("Quan et al."). The Examiner recognizes that none of the references previously relied upon by the Examiner teach or suggest the material carriers recited by claim 12. Applicants respectfully traverse this rejection.

As discussed above, each of Van Scott et al., Yu et al., and Znaiden et al. fail to teach or suggest that the compounds recited in the present claims could be used to improve skin firmness, improve the appearance of facial contours or reduce the appearance of sagging skin. There is nothing in the teachings of Quan et al. that remedy these deficiencies of Van Scott et al., Yu et al., and Znaiden et al. In contrast to the claimed methods, Quan et al. relates to methods for treating wrinkles. Accordingly, none of the references relied upon by the Examiner, taken in any combination, teach or suggest the claimed invention. Applicants, therefore, respectfully request withdrawal of this rejection.

#### IV. Double Patenting Rejection

The Examiner has provisionally rejected claims 1-11 and 13-23 as allegedly being unpatentable over claims 1, 2, 4-7, 10-12 and 14-16 of copending Application No. 09/677,737. Applicants respectfully traverse this rejection.

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Copending Application No. 09/677,737, relates to methods for ameliorating redness or inflammation of mammalian skin (claims 1-10) and methods for ameliorating the irritating effects of a skin irritating composition (claim 11-16). The copending application fails to teach or suggest the methods of the presently claimed invention for improving skin firmness, improving the appearance of facial contours or reducing the appearance of sagging skin. Accordingly, Applicants respectfully request withdrawal of this rejection.

#### V. Conclusion

Applicants believe that the foregoing presents a full and complete response to the outstanding Office Action. An early and favorable response to this Amendment is earnestly solicited. If the Examiner feels that a discussion with Applicants' representative would be helpful in resolving the outstanding issues, the Examiner is invited to contact Applicants' representative at the number provided below.

If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 10-0750/JBP-534/EMH. If a fee is required for an Extension of time 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,



Eric M. Harriman

Reg. No. 40,410

Attorney for Applicants

October 19, 2001  
Johnson & Johnson  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933-7003  
(732) 524-3619